

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Friends of Jane Harman and
Jacki Bacharach, as treasurer

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)
) MUR 3987
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GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

On April 23, 1996, the Federal Election Commission ("Commission") found reason to believe that Friends of Jane Harman and Jacki Bacharach, as treasurer, ("Harman Committee," "Committee," or "Respondents") violated 2 U.S.C. § 441b(a) of the Federal Election Campaign Act of 1971, as amended, ("Act" or "FECA").

II. ANALYSIS

1. Law

The Act prohibits any candidate or political committee from knowingly accepting any corporate contributions. 2 U.S.C. § 441b(a). This "'knowing' standard, as opposed to a 'knowing and willful' one, does not require knowledge that one is violating a law, but merely requires an intent to act," and thus requires only that respondent have knowledge of the facts of the transaction, rather than that the activity is illegal. FEC v. Damesi for Congress, 640 F. Supp 985, 987 (D.N.J. 1986) (citing cases) (construction of section 441a(f) "knowingly accept"). The Act's broad prohibition on corporate contributions extends to "anything of value" given to any federal candidate in connection with any Federal election. 2 U.S.C. § 441b(b)(2). When a corporation fundraises for a federal candidate and the campaign accepts individual contributions collected or otherwise facilitated by the corporation, the committee has accepted something of value from that corporation.

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The Act provides for specific exemptions from the definition of contribution or expenditure, thereby setting forth permissible bounds of corporate activity in connection with a Federal election. For example, a corporation may make partisan communications to its stockholders and executive or administrative personnel and their families on any subject. 2 U.S.C. § 441b(b)(2)(A). See 11 C.F.R. § 114.3 (election advocacy communications to restricted class); see also H. Doc. No. 95-44, 95th Cong., 1st Sess. 3, 104 (1977) (Explanation and Justification of Regulations explaining permissible contents of these internal communications). A corporation may not, however, step beyond the line of communication to actually collecting contribution checks or otherwise facilitating the making of contributions to Federal candidates. See Advisory Opinions 1987-29, 1986-4, 1982-29 and 1982-2. See also MUR 3540.¹

In addition, the corporation's employees may make occasional, isolated or incidental use of the facilities of a corporation for individual volunteer activity in connection with a Federal election and must reimburse the corporation for increased overhead or operating costs. 11 C.F.R. § 114.9(a)(1). The "individual volunteer activity" exemption does not, however, extend to collective enterprises where the top executives of a corporation direct their subordinates in fundraising projects, use the resources of the corporation, such as lists of vendors and customers or solicit whole classes of corporate executives and employees and collect and forward contributions to recipient committees. See MUR 3540.

¹ The Commission has promulgated regulations regarding corporate facilitation, which are codified at 11 C.F.R. § 114.2. See 60 Fed. Reg. 64,274-75 (1995). The regulations became effective on March 13, 1996, after the occurrence of the activities at issue in this matter.

2. Factual Development

This matter concerns the involvement of the Harman campaign in an October 29, 1993 campaign fundraising event at Hughes Electronics Corporation ("Hughes" or the "Corporation"), through which Hughes raised more than \$20,000 in contributions for the Harman Committee.

Representative Harman and C. Michael Armstrong, the Chairman and CEO of Hughes, became acquainted prior to the general election in 1992 when then Candidate Harman's office called Mr. Armstrong and said that she would like to come see him. According to Mr. Armstrong, "Nobody else had ever done that and so I said, sure, I was a Republican -- I am a Republican. And to have a Democratic candidate give me a call, I thought was highly courageous. And she came and she presented herself and she discussed her thoughts and issues and after she left, I thought she made a lot of sense." Mr. Armstrong subsequently endorsed Candidate Harman in the 1992 general election for the open House seat. Consistently, the Hughes Active Citizenship Committee ("Hughes PAC") made two contributions totaling \$2,500 to the Harman campaign in September and October 1992, and then three post-election contributions toward 1992 debt retirement:

HUGHES PAC CONTRIBUTIONS TO JANE HARMAN in 1992

Reported Contribution Date	Reported Receipt Date	Election Designation	Amount
9/24/92	9/28/92	92 General	\$1,500
10/26/92	10/28/92	92 General	\$1,000
12/10/92	12/29/92	92 General	\$1,000
12/23/92	1/8/93	92 General	\$1,000
12/23/92	1/8/93	92 Primary	\$2,000

After defeating her Republican opponent in the 1992 general election, Representative Harman sought to further develop relationships with important employers in her congressional district, which she described as "the aerospace center of the universe." Perhaps foremost among these employers was Hughes. Asked to describe her relationship with Hughes, Representative

Harman stated: "It is a very positive relationship. They are the largest industrial employer in California. They are a major employer in my district. I have been there probably a dozen times in various parts of the company," and Mr. Armstrong "comes by quarterly, more or less, and I see him more often than that. He and his wife and my husband and I have had dinner on at least one occasion." In addition, Representative Harman is also acquainted with Bill Merritt, a Hughes Vice President in charge of the company's Washington office, who headed Hughes' federal government relations efforts. Both Representative Harman and her staff have had frequent contacts with Mr. Merritt. Representative Harman made formal solicitations addressed to the Hughes PAC for contributions and Merritt was the Hughes officer who was active administrator of the PAC.

Sometime in the spring of 1993, Representative Harman asked Mr. Armstrong to raise funds for her 1994 reelection campaign. Representative Harman testified:

I decided to contact Armstrong, who by that time had become a personal acquaintance and had been very helpful to me in the last election by endorsing me, and to ask for his personal contribution and for his help in raising money and he agreed to do so. . . . I said I anticipated a very tough reelection campaign and wanted his personal help and was planning to request the help of the Hughes PAC and also hoped that he could help me raise other money. . . . He said he would do that, that he would personally contribute, that he would raise money, that he would support my PAC request, which I believe we also made directly to the PAC director, and would report back with some kind of a proposed plan of action for raising money.

As is described more specifically below, in the months that followed, the Harman campaign and Hughes officials continued to discuss plans for the fundraiser which was being delayed because of scheduling difficulties. According to Jo-Ann Costa, Director of Public Affairs at Hughes and an 18 year veteran of the Corporation, the initial Hughes fundraising idea to benefit the Harman Committee was a dinner for Hughes policy board members (senior Hughes' executives) which was to be used to retire 1992 campaign debt, but what ultimately took place was a fundraising

reception in-house at Hughes in October 1993 that raised money for Representative Harman's 1994 re-election campaign.

Recollecting this initial conversation, Mr. Armstrong stated that Representative Harman "wanted us -- or she would hope we would do a fundraiser for her." The conversation took place "months and months prior to the actual event . . . and then it took us that long to get our act together, to put it on." Mr. Armstrong was not surprised to have received this request, because Harman was a "very competitive campaigner and I believe she thought of this and communicated it either to me or through my team to me, because we didn't have a history of doing that kind of thing, at least in my time frame, and I don't think others had either."

Mr. Armstrong communicated to Bill Merritt in Hughes' Washington Office his approval of Harman's request, and on April 22, 1993, Mr. Merritt asked Ms. Costa to make arrangements for the fundraiser, to begin by calling Judy Sitzer of the Harman Committee. According to Ms. Costa, making arrangements for a campaign fundraiser was not something that she had done before but that Mr. Merritt may have "thought that was the natural course to call me and ask me to make the arrangements."

Soon after April 22, Ms. Costa called Judy Sitzer. Sitzer was then Rep. Harman's District Director in Los Angeles who had served as the first paid staffer of her 1992 campaign and as campaign manager of her first reelection campaign in 1994. Sitzer had become Finance Director during the 1992 campaign and as far as fundraising events, Representative Harman said Ms. Sitzer "was the person who reviewed details to make sure that everything was appropriate." According to Ms. Costa, Ms. Sitzer was not surprised to receive the phone call, probably because Representative Harman had specifically asked Ms. Sitzer to meet with Jo-Ann Costa to discuss the fundraiser.

Ms. Costa made inquiries to facilitate the fundraiser and had talked with Hughes' outside counsel about compliance with the FECA and was informed that the least problematic possibility was to have the fundraiser in the home of Hughes executive. Ms. Costa reported back to Mr. Merritt with this information, and he "told me that there wouldn't be a fundraiser in an executive's home, that he wanted me to put it together at the corporate office, if at all possible."

During the week of May 10-14, 1993, Ms. Costa and Ms. Sitzer met for lunch at Hughes' Executive Offices and discussed plans for the fundraiser which they tentatively selected to be held either June 18, June 25 or during the second week of July. During the lunch, they discussed the appropriate form for the fundraiser, "should it be a dinner or a reception, what should it be. We decided that a reception would be preferable to a dinner."

According to Judy Sitzer:

I was actually very sort of surprised that she [Ms. Costa] had everything so well thought out and organized. ... [Ms. Costa] said that we were going to have to pay. The food would be done by their caterer. We were going to have to pay him directly. The room cost \$75 or whatever it cost. We are going to have to pay them back for that. They were going to charge us for administrative type things, like her time, which she was going to keep track of, and whatever she used, their paper clips. Literally that is the type of thing she said to me. I thought she was being extraordinarily cautious, but I sort of figured that it was better to be safe and listen to what she said.

During this meeting over lunch, Ms. Costa also may have shown Ms. Sitzer where the fundraiser was to take place within Hughes' offices. A thank you letter from Ms. Costa to Ms. Sitzer dated May 18, 1993, states "I so enjoyed meeting with you over lunch last week and I appreciate your interest in Hughes' invitation to Ms. Harman to join us in a reception in her honor." Ms. Costa "bcc'd" this letter to her boss, T.G. Westerman, Hughes Senior Vice President for Human Resources and Administration, and the bcc also notes that she faxed it to Bill Merritt in the Corporation's Washington Office.

Judy Sitzer understood that Jo-Ann Costa would take care of everything regarding the fundraiser and no action was required on her part, other than to report back to Rep. Harman about her lunch at Hughes. According to Representative Harman, Judy Sitzer "reported back to me that the plan was to have an event and ultimately I knew where the event was, and more of the detail of it."

Thereafter, the date for the event was pushed back several times, with, as noted, the purpose changing from 1992 debt retirement to a fundraiser for Representative Harman's 1994 reelection efforts. In multiple phone conversations between Jo-Ann Costa and Judy Sitzer, an August 20th date was set for the fundraiser. That date was also cancelled. During these months, Mr. Armstrong and Representative Harman would refer to the fundraiser at the end of substantive conversations on other issues. According to Mr. Armstrong, "there was reference to it in conversations we would have, such as changing of dates, trying to make it happen." Representative Harman stated that "I am sure I conversed with [Mr. Armstrong] about substantive issues and it probably happened that during one of those he said, 'I am working on our event and it is in good shape,' but there is no specific planning session of any kind, that I can recall." Eventually in early October, it was agreed that the fundraiser would be held on October 29th. Bill Merritt in Hughes' Washington Office arranged this date with Representative Harman's Chief of Staff.

After confirming the date, Ms. Costa called Ms. Sitzer to find out some necessary information on the logistics of the fundraiser including background information on Representative Harman for use in the invitation. She also contacted Hughes' customer service office so arrangements could be made to permit Rep. Harman to enter the Hughes complex.²

² The Hughes Executive Office facility is a secured building and according to Judy Sitzer, visitors were required to sign in, wear badges, and be escorted to the offices that they were visiting. Hughes had an office responsible for tracking dignitaries who visited the facility, and

She also made catering arrangements, obtained use of the conference room in which the event was to be held, and contacted the outside law firm to insure FECA compliance.

On October 12, 1993, Hughes sent an invitation letter on corporate stationery signed by Mr. Armstrong. The letter was addressed to approximately 233 executives of Hughes (based on Hughes' subsequent reconstruction of the number of personnel in particular high-ranking positions) and included an invitation to attend a fundraiser, which was to be held in the Hughes Executive Dining Room adjacent to its Board Room. The letter stated: "It is important that we support Congresswoman Harman. She is a proven friend to Hughes. . . who has gained important positions on the House Armed Services and Science, Space & Technology committees." The letter concluded with a request to RSVP to Ms. Costa regarding the reception.

Ms. Costa had drafted the invitation although other Hughes' executives provided input resulting only in minor word changes. Ms. Costa believed she "faxed a copy to Judy Sitzer because she had asked me earlier to send her a copy of the invitation. . . . So, it would have been in the same time frame when we were discussing the whole thing where she said anything you put out, I want a copy of, or an invitation or whatever. So, I made a note. That is why I know I sent her a copy of this." Ms. Sitzer, however, denied seeing a faxed copy of the invitation letter prior to the event.

On October 13th, the next day, Hughes sent another solicitation letter on corporate stationery, this one signed by Ted G. Westerman, Hughes' Senior Vice President for Human Resources and Administration, and William D. Merritt, Hughes' Vice President for Federal Government Relations, using the official name of Hughes-PAC, Hughes Active Citizenship

this office was the one Costa contacted in arranging for Rep. Harman to attend the Hughes fundraiser.

Committee. The letter was addressed to approximately 38 of the most senior executives of Hughes [again based on a subsequent totaling of personnel in particular high positions at Hughes]. The letter's stated purpose was "to ask you and your senior people to participate in the fundraising portion of the event. . . ." The letter continued by "suggesting" the following contribution amounts according to seniority:

Director & E9 equivalent	\$100
Staff Vice President	\$200
Vice President	\$300
Senior Vice President	\$500

While stating that contributions were voluntary, the letter directed invitees to "please extend the invitation to contribute to the senior people (Staff Vice Presidents and E9's) reporting to you." The letter instructed contributors to draw personal checks made payable to the Committee and to forward those checks in advance of the event to Ms. Costa for collection.

Ms. Costa had also drafted the October 13th letter with input from Mr. Westerman and Mr. Merritt. This input included changing the signature line to add "Hughes Active Citizenship Committee." Regarding whether Ms. Sitzler saw this letter, Ms. Costa said: "I don't have a specific recollection of this letter being faxed to her, although I suspect I did fax it to her." According to Mr. Armstrong, he had a discussion with Bill Merritt and Ted Westerman on how much invitees should give. This apparently resulted in the suggested contribution levels included in the October 13th invitation.

Representative Harman stated that she found out that the fundraiser was going to be held at Hughes corporate offices the week before the event. Judy Sitzler said that she briefed Representative Harman, informing her how many people were going to be at the event and its timing. However, Ms. Sitzler stated that it was after her initial lunch meeting with Ms. Costa in

May, 1993, that Ms. Sitzler informed Representative Harman that the fundraiser would be held at the Hughes facility.

On October 29, 1993, the fundraiser was held as scheduled at the Hughes Corporation. The fundraiser yielded \$20,600 in contributions to Representative Harman's Committee from 112 contributors. Approximately 100 people attended the fundraiser, including Mr. Armstrong, Mr. Merritt, and Mr. Westerman. Only Hughes' employees were invited to the fundraiser, and besides Representative Harman and Judy Sitzler, all other attendees were employees of Hughes. Introduced by Mr. Armstrong, Representative Harman then gave prepared remarks. Some contributions were forwarded in advance of the fundraiser to Ms. Costa via interoffice mail as instructed and were saved until the fundraiser, while others were brought in person and handed to Ms. Costa at the door. Ms. Sitzler knew that contributions were being given to Ms. Costa, rather than coming directly to the Harman Committee.

While Ms. Sitzler thought she was handed the contribution checks at the event, Ms. Costa stated that "they got away without us giving them the checks" and after telephonic arrangements were made, Judy Sitzler returned some time later to pick up the checks. Consistently, the Harman Committee reported the receipt date for the itemizable contributions as Wednesday, November 10, 1993, approximately 12 days after the Friday, October 29, event.³

Around the same time the contribution checks were picked up, Hughes sent an invoice to the Committee entitled "RECEPTION FOR JANE HARMAN - OCTOBER 29, 1993" to bill for corporate expenditures made in connection with the fundraiser. These expenditures included:

³ Because of the Act's itemization threshold, see 2 U.S.C. § 434(b)(3)(A), an exact comparison is not possible between the amounts contributed by the Hughes executives and the amounts suggested in the October 13th solicitation letter. Nonetheless, among the reported donors, seven Senior Vice-Presidents gave \$500 as suggested (one gave \$300) and seven Vice-Presidents gave \$300 as suggested (two gave \$250).

400 Letters	\$ 16.00
Staff labor	\$ 731.46
Facilities Cost	\$ 50.00
Badges	\$ 10.00
Other Administrative	\$ 50.00

The invoice contained a "TOTAL DUE TO HUGHES AIRCRAFT COMPANY" of \$857.46 and a separate "TOTAL DUE TO CANTEEN CORPORATION" of \$950.00 for the catering of the event. Canteen was a corporation separate from Hughes but had an office located on Hughes premises which provides food services for Hughes. Ms. Costa said she was required to call more than once to seek payment from the Harman campaign and the Committee finally paid the Hughes invoice via check on February 9, 1994. The Harman campaign's disclosure reports reveal that it paid Canteen Corporation \$950, also on February 9, 1994.

No contributor cards had accompanied the individual contribution checks, and Ms. Sitzler opined that she probably made follow-up phone calls to obtain the required contributor information for the itemizable contributions. The check copies produced after Ms. Sitzler's deposition all contained a handwritten number (155) apparently added by Ms. Sitzler which, according to a print-out provided by counsel, was an internal Committee fundraising code for "Hughes." Sitzler kept the check copies in a file folder in the Committee's records labeled:

Hughes
Oct. 1993
event 155

The Hughes' fundraiser was an unusual event both from the Corporation's perspective and from the Committee's. According to Judy Sitzler, who successively was finance director, campaign manager, and fundraising consultant in each of Jane Harman's three campaigns from 1992 to 1996, the Harman Committee had approximately 50 fundraisers for the 1992 campaign and 60 for the 1994 campaign. With the exception of the Hughes event, all fundraisers were

organized in the same format whether initiated by the Harman Committee or initiated by an outside individual or group which was interested in raising money for Jane Harman.⁴ During the course of planning a fundraiser, Judy Sitzler would routinely keep Representative Harman apprised of what was going on with the planning process for the event, and then one to two weeks before it was held, Ms. Sitzler would inform Representative Harman that the fundraiser would take place, who would be there, and the particular area of interest to the contributors. Ms. Sitzler also agreed that the fundraiser at Hughes was the only fundraiser where she or someone in a similar position to her did not have the oversight and logistical control of the event, as described above. According to Ms. Sitzler, the October, 1993 fundraiser was the only event for Jane Harman which was held in-house on corporate premises. While stressing that "no corporations have hosted fund-raisers for me," Representative Harman also acknowledged that the October 29 fundraiser "was the only one on corporate premises."

⁴ According to Ms. Sitzler, the standard Harman fundraising format was as follows:

- A: Sometimes we targeted people for her to call to put fundraisers together for her. Then, you know, I would send out the invitations and work with the committee.
- Q: In either case would you see the solicitations, the invitations?
- A: Yes.
- Q: Would you review the solicitations or invitations?
- A: I was responsible for sending them out.
- Q: So you read them.
- A: The campaign always sent out our own invitations. It was very rare for somebody to do. I can't remember a time.
- Q: And presumably you prepared the guest list.
- A: Yes.
- Q: Would that guest list though have had input from the committee?
- A: Yes.
- Q: But you would see the guest list and add people?
- A: Right.
- Q: At some point you would know how many people had accepted to come to the fundraiser?
- A: Yes.

According to Mr. Armstrong, "as far as Hughes sponsoring an event at a Hughes facility for a political person, Jane Harman's was the only one I am aware of during my five years." Jo-Ann Costa confirmed that she did not know of any fundraisers Hughes had held for any candidate besides Jane Harman, and there had been no fundraising social events such as cocktail hours or dinners even for charitable organizations.⁵ Also, Mr. Armstrong stated that the Hughes PAC had never held a fundraising social event, and instead relied on written communications and question and answer sessions.

3. Analysis

The investigation has revealed that the Hughes' fundraiser was a concerted corporate undertaking directed by Hughes' top executive in an effort to raise money for the Harman campaign. The two letters were strong messages from the corporation's CEO and other top executives of the importance of supporting the candidate in connection with the event. There was also the active involvement of Corporate officials and staff responsible for public affairs and government relations. Moreover, there was corporate solicitation and collection of contribution checks for the Harman campaign from more than 100 Hughes executives and managers. In addition, the investigation has revealed that the Harman campaign worked closely with the Corporation in setting up the event and that it knew in advance that the event was to be held in-house at Hughes and that the Corporation was itself collecting the contributions. Indeed, both Judy Sitzer and Representative Harman attended the in-house corporate fundraiser and Sitzer later picked up the more than \$20,000 in contributions that the Corporation had collected from its executives. Thus, the Hughes fundraising event resulted in a prohibited corporate contribution which the Harman campaign knowingly accepted, in violation of Section 441b(a). In addition,

⁵ As described supra, footnote 2, due to security restrictions, it may be difficult to hold social events at Hughes with outside guests.

the Corporation advanced the costs in connection with the solicitation of the contributions and hosting the event, totaling at least \$857.46. The Harman campaign paid such costs four months after the event. Such costs constituted an in-kind corporate contribution that was knowingly accepted by the Harman campaign.

It further appears that the Hughes event represented helpful fundraising for Rep. Harman's reelection campaign. Ms. Sitzer conceded that Hughes' offer in the Spring of 1993 to arrange and hold the fundraiser with little effort by Sitzer,⁶ came at a convenient time, in that during that off-year period, she was on Rep. Harman's District Office staff and not on campaign staff, "so I wasn't in a capacity to do that, nor was there anybody else who worked on the campaign who could have done that."

These activities went far beyond any exception to section 441b's prohibition on corporate contributions. As the Harman campaign well knew, the activity at issue was a complete fundraising event, where Hughes solicited, collected and forwarded more than \$20,000 in contributions from Hughes' executives and incurred costs for the event.⁷ By soliciting and

⁶ Ms. Sitzer testified as follows:

- Q: [After the May 1993 lunch with Jo-Ann Costa], what were you going to do next respectively, Ms. Costa and yourself, in regards to the fund-raiser?
 A: She was going to take care of everything. I went back and reported to Jane about our lunch. That was it. I didn't have to do anything.

⁷ Ms. Sitzer explained that in contrast to usual fundraisers sponsored by the campaign where contributions were forwarded directly to the campaign, here the corporation (Hughes) collected the contributions:

- Q: Why at this event did the contributions go to Jo-Ann Costa?
 A: This is the way Hughes wanted it to be done.
 [Deponent's counsel]: Did you offer an alternative?
 A: I believe I told her we have a post office box., which is how we normally received all contributions.
 Q: [Commission counsel] What did she say in response to that?

collecting contributions via corporate personnel, in-house mail, and through inter-office facilities, and passing such contributions on to a federal candidate, Hughes stepped well beyond the lines of the Act's communication exception to Section 441b. See *supra* p. 2. Further, as Hughes has consistently described the fundraiser as a corporate event, with its CEO delegating to other executives and staff the task of organizing it as he would any other work project and only Hughes executives were invited to the event that was held in the Corporate Executive Dining Room adjacent to the Corporate Board Room, the fundraiser does not represent "individual volunteer activity" by corporate employees under the Commission's regulation, see *supra* p. 2-3.

As previously discussed in detail, the Harman campaign participated in the event, agreed to the arrangement from the outset and accepted the contributions collected in connection with it. Representative Harman claimed that she only became aware that the event would take place inside Hughes' corporate facilities a week beforehand. Ms. Sitzer, however, testified that she told the Congresswoman this six months before the event, *supra* p. 9-10. In any case, both Representative Harman and Ms. Sitzer admit that they were aware that the event was to be held at Hughes' corporate offices prior to when it occurred and they attended.

Ms. Sitzer plainly was aware the event was structured as an in-house fundraiser at Hughes from the outset, and parts of her testimony that suggest the contrary are not credible. While she claimed never to have seen the two Hughes' letters before the event, Ms. Costa had a specific memory that Sitzer had asked to see all materials being sent out (as Ms. Sitzer had explained was her normal practice) and in response had faxed Sitzer the Hughes' letter signed by Mr. Armstrong and thought she had also faxed the Merritt/Westerman follow-up letter (suggesting

A: I don't remember exactly, but I believe she said, no, we are going to collect the checks and we will hand them over to you. It was my impression that she wanted to have control over everything and then hand it over to the campaign later.

specific contribution amounts), *supra* p. 8, 9. Ms. Sitzler conceded she must have known that the contributors were all Hughes people at least at the point when she secured contributor information, but suggested she was not aware earlier. However, when asked about her reaction at the point (after the FEC complaint was filed) when she claimed to first see the Hughes invitation letters, she said this:

- Q: At the point when you first saw the two letters, perhaps you could describe to us when you looked at the two letters was there anything that came as a surprise to you, in view of your knowledge of the setting up of the event and the way it was carried out?
- A: Was I surprised to see this? No. I wasn't surprised to see a letter from Mike [Armstrong]. I was slightly surprised to see a letter [the second letter] asking people for *specific amounts of money*.
- Q: Why were you surprised?
- A: Because I have never seen that done before.
- Q: Were you surprised that the letter was directed to executives?
- A: Not especially. No.

Representative Harman, as well as Ms. Sitzler, acknowledged the illegality of corporations sponsoring or fundraising for candidates. For example, Rep. Harman said "No corporations have hosted fund-raisers for me. That is against the law." Instead, Rep. Harman and Ms. Sitzler contended that it was not Hughes Electronics Corporation fundraising for them, but only Mike Armstrong, Hughes' Chairman and CEO. Yet the facts discussed above leave little doubt that both Representative Harman and Judy Sitzler understood that this was a corporate event.

Indeed, at their depositions, both Representative Harman and Ms. Sitzler made unprompted statements that revealed their awareness that this was a corporate sponsored fundraising event. For example, when asked about the complaint in this matter, Ms. Harman testified that she "was surprised and, frankly, thought it was a foolish act on her [opponent's] part since it was pointing out to the universe that Hughes supported me." (emphasis added). When asked why the contributions were all first sent to Ms. Costa, a Hughes employee, Ms. Sitzler testified: "That is the way Hughes wanted it to be done." (emphasis added).

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Representative Harman also made additional references to the Corporation's involvement in the fundraising event. For instance, she stated that "Hughes had reviewed all of its actions with its counsel" and that Mr. Armstrong and Hughes sought legal advice so that they "were protected in the roles that they employed." Near the conclusion of her deposition, Ms. Harman attempted to minimize the significance of her characterization of the Corporation's involvement stating:

we both used the word 'Hughes' sometimes, that I specifically asked Mike Armstrong, the human being, to help me and he did, and that I have a long relationship with Mike Armstrong, one that continues now, and I have similar kinds of relationships with lots of other people who are also aerospace workers and executives and my constituents and I have approached many of them in their individual capacities and asked for help, and their individual help matters to me a great deal in terms being a credible and successful candidate in a very tough district. So I just wanted to be sure that if there is any careless use of the word 'Hughes,' it is not Hughes I approached, it is Mike Armstrong.

While Representative Harman asserts that her request for support was made to Mr. Armstrong only in his individual capacity, she acknowledged that when she first approached Mr. Armstrong seeking support, she also sought his assistance in obtaining contributions from Hughes-PAC, the political arm of the Corporation. Mr. Armstrong's ability to provide support from Hughes PAC is derived from his position as CEO of the Corporation.

In an apparent attempt to characterize the October 1993 fundraiser as an event hosted by Mr. Armstrong in his individual capacity and as distinct from the Corporation, Rep. Harman denied any awareness that Hughes and Hughes-PAC played any role in the event. Thus, when asked whether Harman campaign staff would have contacted the Hughes' Washington office with respect to arranging the fundraiser, she testified:

I don't think so. I know I made a personal request to Armstrong, and he responded to that personal request. Separate from that, I believe we made a formal request to the Hughes PAC for contributions, and I don't recall whether I called or my fund-raising assistant called the PAC, I don't recall precisely how we did that but when I spoke to Armstrong, I

told him that we were making a formal request to the PAC. That was the only contact I had of a more formal nature with Hughes.

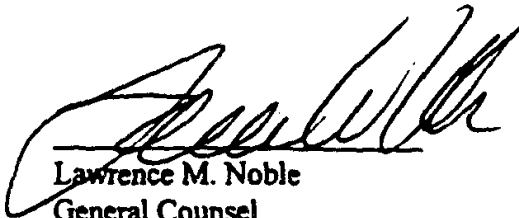
Yet the Washington office of Hughes was involved in the October 1993 fundraiser. In fact, Bill Merritt was in charge of the Hughes Washington office, was the Hughes federal government relations head, and as administrator of the PAC was the person to whom Harman's PAC solicitations were directed. Not only did Merritt attend the fundraiser at Hughes, but according to Ms. Costa, the instructions for the form of the event came from Mr. Merritt. In addition, Ms. Costa clearly stated that the final date for the fundraiser was worked out with a member of Rep. Harman's Congressional staff by Merritt's office in Washington and then communicated to Hughes in California.

In summary, the investigation in this matter has revealed that Hughes Electronics Corporation orchestrated a fundraising event for Representative Harman at its corporate headquarters, that the Harman campaign was involved in arranging the event, with Representative Harman and the Harman campaign's Finance Director in attendance, and that in connection with the event the Corporation solicited and collected from its personnel contributions totaling \$20,600 which were transmitted to and accepted by the Respondents. The Corporation also incurred expenses for the solicitations and the event, totaling at least \$857.46, which the Harman campaign paid four months later. In light of all the foregoing, this Office is prepared to recommend that the Commission find probable cause to believe that Friends of Jane Harman and Jacki Bacharach, as treasurer violated 2 U.S.C. § 441b(a).

III. RECOMMENDATION

Find probable cause to believe that Friends of Jane Harman and Jacki Bacharach, as treasurer, violated 2 U.S.C. § 441b(a).

10/7/97
Date


Lawrence M. Noble
General Counsel

23-04406-3720